

Opinion No. 38-2005

July 15, 1938

BY: FRANK H. PATTON, Attorney General,

TO: New Mexico State Police Box 919 Santa Fe, New Mexico. Attention: Sergeant A. B. Martinez.

{*251} We have your letter dated July 14, inquiring whether Justices of the Peace have jurisdiction to try minors in misdemeanor cases.

It is true that Section 79-218, N.M. S. A., 1929 Compilation, implies that the Justice of the Peace may exercise his jurisdiction over minors in misdemeanor cases. However, the foregoing section of the law must be read in connection and harmonized with other provisions of our statutes.

For example, Sections 61-104 and 61-105, N.M. S. A., 1929 Compilation, provide respectively as follows:

"61-104. District court has exclusive jurisdiction of girls {*252} under eighteen in misdemeanor charges. Girls under the age of eighteen years shall be tried upon misdemeanor charges only in the district courts of the state, and no complaint shall lie or any such case be tried against said girls in the courts of the justice of the peace.

"61-105. Preliminary hearings of girls under eighteen before district court only. Preliminary hearings upon charges of felonies lodged against girls under the age of eighteen years shall be held only before the district judges, sitting as committing magistrates."

Reference must also be made to Chapter 35, Article 41, N.M. S. A., 1929 Compilation, dealing with juvenile courts and juvenile delinquents. In Section 35-4101 a juvenile delinquent is defined, among other things, as "any one under the age of eighteen years who violates any laws of this state". Section 35-4102 creates the juvenile courts of our state and provides that such juvenile courts shall have "exclusive original jurisdiction over juvenile delinquents."

Bearing in mind that a minor is any person below the age of twenty-one years, and harmonizing and attempting to harmonize the aforementioned statutes, it is my opinion that the jurisdiction of a Justice of the Peace to try minors in misdemeanor cases is limited to minors between the ages of eighteen and twenty-one years.

Trusting the foregoing sufficiently answers your inquiries, I am,

By: FRED J. FEDERICI,

Asst. Atty. Gen.